IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..02..2005

CORAM

THE HON'BLE MR.MRAKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE C.NAGAPPAN

W.A.Nos.1481 and 1667 of 1998 & 2694 of 1999
and
C.M.P.Nos.16210 & 18660 of 1998

M.Suyambukani ..Appellant in W.A.1481/1998 & 3rd respondent In W.As.1667/1998 & 2694/1999.

Vs.

1. Smt.Thayammal ..1st respondent in W.As.1481 & 1667 of 1998 & appellant in W.A.2694/1999.

2. Indian Rare Earths Ltd.,
rep. by its Senior General Manager
(Personnel & Administration)
Sher Banoo, 6th Floor,
111, Maharshi Karve Road,
Mumbai - 400 020.
..2nd respondent in W.As.1481 & 1667 of 1998 & 1st respondent in W.A.2694 of 1999

3. The Deputy General Manager,
Indian Rare Earths Ltd.,
Manavalakurichi Plant,
Manavalakurichi - 629 252.
..3rd respondent in W.A.1481/1998 & 2nd Respondent in W.A.2694/1999 & Appellant In W.A.1667 of 1998.

PRAYER: Appeals filed against the order of the learned single Judge dated 23.09.1998, passed in W.P.No.10506 of 1991, as stated therein.

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Mr.R.Yashod Vardhan :: For Appellant in W.A.1481/98
& for 3rd respondent in
W.As.1667/1998 & 2694/1999

Ms.R.Vaigai :: For 1st respondent in W.As.1481 &
1667 of 1998 & appellant in
W.A.2694/1999.

Mr.Sanjay Mohan :: For 3rd respondent in W.A.1481/98 &
For M/s.Ramasubramaniam 2nd respondent in W.A.2694/99 &
Associates Appellant in W.A.1667/98.

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These three writ appeals are filed by three different parties against the same order of the learned single Judge dated 23.09.1998, passed in W.P.No.10506 of 1991.

2. Heard learned counsel for the parties, and perused the records.

3. The facts of the case have been mentioned in the impugned order of the learned single Judge, and hence, we are not repeating the same, except when necessary.

4. One Thayammal wife of late A.Chelliah filed writ petition No.10506 of 1991 alleging that her late husband was employed with the Indian Rare Earths Ltd., a Central Government Undertaking. It was alleged in paragraph-3 of her affidavit filed in support of the writ petition that she was married to late A.Chelliah on 02.12.1978 and a son was born out of the wedlock in the year 1979. It was further alleged that from 08.02.1985 her husband started living with another lady, whose name is Suyambukani. It was alleged in paragraphs-4 and 5 of the petitioner's affidavit that since the said A.Chelliah started living with Suyambukani, he stopped maintaining his son and the petitioner and hence she filed M.C.No.11 of 1985 before the First Class Judicial Magistrate, Padmanabapuram seeking maintenance of Rs.250/- for herself and Rs.150/- to her son. Her husband contested the case, but the Magistrate passed an order directing A.Chellaih to pay a sum of Rs.100/- to the petitioner and Rs.75/- to her son. Against the said order, A.Chellaiah preferred an appeal in C.A.No.48 of 1988 before the Appellate Court, Nagercoil, which was dismissed on 09.1.1989. It was further alleged in the affidavit filed in support of the writ petition that both the Courts have rejected

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the so called deed of agreement of divorce dated 27.3.1985 relied on by A.Chelliah to support his case. Writ petitioner's husband A.Chellaih died on 17.12.1989. It is further alleged in the petitioner's affidavit that on 01.03.1990 she wrote to the respondent-Company seeking payment of the terminal benefits due to her late husband and for an appointment on compassionate grounds. She received a reply from the respondent-Company dated 28.03.1990 stating that her husband informed the Company that he had divorced her by mutual consent by way of a Deed of Dissolution of marriage registered on 27.3.1985 at the Manavalakkurichi Sub Registrar Office. In the said letter it was further stated that her husband had married one Suyambukani and nominated her for the purpose of Gratuity and that he had retained the petitioner's name for the Provident Fund, which would be released soon to the writ petitioner. The writ petitioner again wrote a letter to the respondent-Company seeking an appointment on compassionate grounds. The writ petitioner received a reply dated 08.01.1991 stating that since her husband divorced her by mutual consent and married one Suyambukani, she has no claim for a job in the Company. The writ petitioner, thereafter, came to know that by order dated 22.12.1990 Suyambukani was appointed as a helper in the respondent-Company from 26.12.1990 ignoring the claim of the petitioner. Hence, she filed the writ petition.

5. A counter affidavit was filed by Suyambukani, and we have perused the same. In paragrah -3 of the counter it is stated that the marriage between the writ petitioner and A.Chellaiah was dissolved by mutual consent by executing a deed of dissolution of marriage on 27.03.1985. Thereafter, the deceased Chellaiah married Suyambukani, and out of the wedlock a child was also born to them. The respondent - Company appointed Suymabukani as helper on compassionate ground as she was the legally wedded wife of late A.Chelliah. It is alleged that her appointment was valid.

6. The learned counsel for the writ petitioner subsequently filed documents to show that the writ petitioner Thayammal is not mentally normal and physically not suitable for employment. As stated in paragraph-9 of the impugned order of the learned single Judge, there is no dispute that the respondent-Company wrote several letters to the writ petitioner asking her to come and attend duty. But, she did not attend before the competent authority on the ground of the fact that she is mentally ill. However, the learned counsel for the writ petitioner contended that the claim of the petitioner that her son's appointment on compassionate grounds may be considered.

7. The learned single Judge by the impugned order allowed the writ petition and directed the 1st and 2nd respondents therein to appoint the son of the writ petitioner on compassionate ground provided he is physically and mentally normal and qualified for the post which was offered to the writ petitioner. Aggrieved against the said order respondent-Company filed Writ Appeal No.1667 of 1998, and Suyambukani filed Writ Appeal No.1481 of 1998

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and writ petitioner Thayammal herself filed Writ Appeal No.2694 of 1999 claiming full terminal benefits of her late husband.

8. It has been stated in the impugned order of the learned single Judge that the post which was offered to the writ petitioner in the year 1991 is no longer in existence, still the respondent-Company has to create a supernumerary post for appointing the writ petitioner's son.

9. There is no dispute that Suyambukani was appointed as a helper in the respondent-Company by order dated 22.12.1990. Thus, she has been working for more than 14 years with the company. In these circumstances, we are of the opinion that it will not be in the interest of justice to disturb her appointment after such a long period. Writ jurisdiction is a discretionary jurisdiction, and in our opinion, this is not a fit case for the exercise of discretionary jurisdiction under Article 226 of the Constitution vide, Chandra Singh Vs. State of Rajasthan, JT 2003 (6) SC 20, Ramniklal N.Bhutta Vs. State of Maharashtra, 1997 (1) SCC 134 (vide paragraph-10). It is well settled that writ jurisdiction is discretionary jurisdiction. Hence, even if there is violation of law, the High Court is not bound to interfere. The Supreme Court in Chandra Singh Vs. State of Rajasthan (supra) held as under:-

> "Issuance of a writ of Certiorari is a discretionary remedy (see Champalal Binani V. CIT, West Bengal, AIR 1970 SC 645). The High Court and consequently this Court while exercising its extraordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant."

In our opinion, this is not a fit case for exercise of discretion under Article 226 of the Constitution.

10. Moreover, it is well settled that the purpose of compassionate appointment is that there is a financial crisis in the family on the death of the wage-earner and some immediate relief is required. Admittedly, the deceased A.Chellaiah died on 17.12.1989 i.e., more than 15 years back. Hence, it is obvious that there is now no immediate financial crisis in the family. Hence, giving appointment on compassionate ground after such a long interval of more than 15 years would not be in accordance with the principle of grant of compassionate appointment.

11. In a very recent decision of the Supreme Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, (2004) 7 SCC 265 the Supreme Court observed that the object of compassionate appointment is to enable the family to get over a sudden financial crisis. This claim has to be strictly construed as it cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution. In our opinion, since Chellaiah died in the year

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1989 obviously it cannot be said that there is a sudden financial crisis due to his death.

12. In the present case, there is no dispute that on 22.12.1990 Suyambukani was appointed on compassionate ground as helper by the respondent-Company, and on 24.06.1991 she was confirmed. From then onwards she is continuing as an employee of the respondent-Company. The writ petitioner-Thayammal filed the writ petition claiming that she was the legally wedded wife of Chellaiah and she should be given compassionate appointment instead of Suyambukani. During the pendency of the writ petition the company offered employment to Thayammal also and this was recorded in the interim order dated 20.04.1993. However, Thayammal did not accept this offer, alleging that she is mentally ill and could not accept the offer of employment.

13. In Buddhi Nath Chaudhary and Others Vs. Abahi Kumar and Others, AIR 2001 SC 1176 the Supreme Court held that even if an appointment was not validly made the same should not be disturbed if the appointee has held the post for a considerable length of time.

14. The same view was again taken by the Supreme Court in Union of India Vs. K.P.Tiwari, 2002 (1) LLJ 672.

15. It may be further stated that the impugned order has traversed outside the scope of the writ petition which merely sought giving appointment to the writ petitioner-Thayammal, and for quashing the appointment of Suyambukani. There was no prayer in the writ petition for giving appointment to the writ petitioner's son, who was not even a party in the writ petition, nor was the prayer in the writ petition modified to that effect. Hence, in our opinion, the learned single Judge was not justified in directing the appointment to the son of the writ petitioner-Thayammal, which was not a prayer in the writ petition.

16. In Veer Mohammed Vs. Municipal Corporation of Delhi, 2002 (3) LLN 663 a Division Bench of the Delhi High Court held that if the petitioner was a minor at the time of the death of the father i.e., 10 years of age, he cannot claim appointment when he became major i.e., 8 years later. It was further held that the right of appointment on compassionate ground must exist on the date on which cause of action arose therefor, namely, at the time when the employee dies in harness. A minor has no right of employment. The object of compassionate appointment being to help the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered after a lapse of considerable time when the immediate crisis is over. The Delhi High Court relied on the decision of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana, 1994 (4) SCC 138 and Pushpinder Kumar Vs. Directorate of Education, 1998 (5) SCC 192 in support of its view.

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17. In the present case when Chellaiah died in the year 1989, the son of the writ petitioner was a minor aged only 10 years. Hence, in view of the above decision he cannot be given compassionate appointment, more so, when that was not even claimed in the writ petition.

18. In Jagdish Prasad Vs. State of Bihar, 1996 (1) SCC 301 it was held that where the son was a minor at the time of his father's death, he was not entitled to claim compassionate appointment long thereafter.

19. The same view was taken by the Supreme Court in Haryana State Electricity Board Vs. Hakim Singh, 1998 Vol.92 FJR 53.

20. The learned counsel for the writ petitioner has stated that Suyambukani had filed a suit for declaration in O.S.No.944 of 1995 which had been dismissed by the II Additional District Judge, Nagercoil on 23.09.1998 observing that since the plaintiff (Suyambukani) married Chellaiah during the existence of the marriage of the defendant (Thayammal), she is not entitled for a declaration that her marriage with Chellaiah is a legally valid one. Be that as it may, in our opinion, it is not necessary for us to go into this question. Even assuming that the marriage of Suyambukani with Chellaiah was invalid, we are not inclined to sustain the impugned order of the learned single Judge for the reasons stated above.

21. As regard the claim of the writ petitioner for terminal benefits of late Chellaiah, it is alleged in paragraph - 7 of the writ petitioner's affidavit file din support of the writ petition that the petitioner received a letter from the company on 28.03.1990 stating that her husband had informed the company that he had divorced the petitioner by mutual consent and had married one Suyambukani and he had nominated her (Suyambukani) for the purpose of gratuity and that he had retained the petitioner's name for the purpose of provident fund which would be released to her. In reply, Suyambukani in her counter affidavit has mentioned that Chellaiah had legally married her after the dissolution of marriage with the writ petitioner and he had nominated Suyambukani for the purpose of gratuity, but by mistake he had omitted to nominate her name for the purpose of provident fund.

22. A perusal of the impugned order of the learned single Judge shows that no direction had been given therein regarding terminal benefits. In our opinion, the parties can approach the appropriate statutory authorities or the civil court in this connection, and if they do so, the same may be decided expeditiously and in accordance with law, after hearing the parties concerned. Impugned order is set aside.

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23. In result, all the three writ appeals are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to:-

1. The Senior General Manager
(Personnel & Administration)
Indian Rare Earths Ltd.,
Sher Banoo, 6th Floor,
111, Maharshi Karve Road,
Mumbai - 400 020.

2. The Deputy General Manager,
Indian Rare Earths Ltd.,
Manavalakurichi Plant,
Manavalakurichi - 629 252.

+ 1 cc to Mr.R.Vaigai, Advocate SR 8151

+ 1 cc to Mr.R.Yashod Vardhan, Advocate SR 8110

Judgment
in
W.A.Nos.1481 & 1667 of 1998
& 2694 of 1999.

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